



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MNR, FF

The landlord and the tenant convened this hearing in response to applications.

The tenant's application is seeking orders as follows:

1. To be allowed more time to make an application to cancel a notice to end tenancy;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and
3. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and Procedural matter

The first issue that I must determine is to whether the tenant should be granted more time to make an application to dispute a notice to end tenancy.

The tenant received the notice to end tenancy on January 10, 2018. The effective date of the notice to end tenancy was January 20, 2018. The tenant did not make their application for more time until January 23, 2018, which is past the effective date of the notice.

Section 66(3) of the Act states

The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

In this case, the tenant filed their application seeking more time; however, that application was filed after the effective date of the notice. I find there is no authority to hear the tenant's application as the tenancy legally ended on January 20, 2018, and the tenant is now overholding the premise. The tenant's application is dismissed.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the landlord purchased the property approximately 4 years earlier and the tenant was living in the premises at that time.

The parties disagree on the amount of rent. The evidence of the landlords' was that rent was \$950.00 per month. The landlord filed as evidence two receipts that were given for the months of July 2017 and August 2017.

The evidence of the tenant was that rent was \$600.00 per month. The tenant stated that they paid the balance of November 2017 (\$200.00), and December 2017, by certified cheque. The tenant agreed that they did not pay any rent for January 2018, February 2018, and March 2018. The tenant stated the landlord has never provided rent receipts during the tenancy.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant's application to be allowed more time to make an application to cancel a notice to end tenancy is dismissed. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In the case, both parties have a different version of rent payable per month. The evidence of the landlord was that rent was \$950.00. The evidence of the tenant was that rent was \$600.00. Both versions are probably.

The onus is on the landlord to prove their version that rent is \$950.00. In support the landlord has provided two receipts; however, I am not satisfied that the receipt were issued at the time rent was paid, as the tenant denied ever getting receipts. Further, the August rent receipt is numbered 205, and July rent receipt is numbered 211, which is a larger number. This leads me to believe the receipts were not issued when rent was given as you as testified by the landlord because you would expect July receipt number to be lower than August.

While I do not necessarily believe the landlord was purposely falsifying documents for this hearing, it does lead me to question the credibility of the landlord. Therefore, I accept the tenant's evidence that rent was \$600.00 and has not been paid for January, February, and March 2018, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,800.00**.

I find that the landlord has established a total monetary claim of **\$1,900.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlords for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 20, 2018

Residential Tenancy Branch